IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3161 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHIKHUDAN A GADHAVI

Versus

DISTRICT PANCHAYAT

Appearance:

1. Special Civil Application No. 3161 of 1988

MR DK MEHTA for MR PV HATHI for Petitioner

MR MUKESH R SHAH for Respondent No. 1

RULE SERVED BY DS for Respondent No. 2

NOTICE SERVED for Respondent No. 3

MS RATNA VORA for Respondent No. 4

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 23/12/2002

ORAL JUDGEMENT

By filing instant petition under Articles 226 & 227 of the Constitution of India, the petitioner has prayed to issue a writ of certiorari, or a writ of mandamus, or any other appropriate writ, order or direction to quash order dated November/December 1, 1987, passed by the Deputy District Development Officer (Revenue), Panchmahals at Godhra, by which punishment of removal from service has been imposed on him under Rule 5 of the Gujarat Panchayat Services (Discipline & Appeal) Rules, 1964. The petitioner has further prayed to set aside order dated March 15, 1988, passed by the District Development Officer, Panchmahals at Godhra, in Appeal No. 5/87 by which the appeal filed by him against the order of removal from service was dismissed. The petitioner has also prayed to set aside judgment dated June 10, 1988, rendered by the Gujarat Civil Services Tribunal, in Appeal No. 138 of 1988 by which the order of removal from service passed by the Deputy District Development Officer (Revenue), Panchmahals at Godhra as confirmed by the District Development Officer, Panchmahals at Godhra, has been upheld.

2. The petitioner is working as a Junior Clerk in the Primary Health Centre of village Mora, Taluka : Godhra, District : Panchmahals. His marriage as per the hindu rites had taken place in the year 1975 with Smt.Manjulaben Fatesinh Gadhvi of village Dahej, District : Bharuch. The petitioner had come in contact with Ms.Haribalaben Jivabhai Gohil of Godhra. An anonymous letter dated April 2, 1986 was addressed to (i) Collector, Panchmahals, (ii) District Development Officer, Godhra, (iii) D.I.G. Baroda Range etc., mentioning that the petitioner, who was a married person and father of two children, had enticed Mr. Haribalaben J.Gohil, and had begotten a child through her. In the said application it was suggested that the matter should be investigated and the petitioner should be brought to book. The Police Sub Inspector of Mora village had conducted an inquiry. He had recorded statements of the petitioner, Ms.Haribalaben, father of the petitioner and the mother of Ms.Haribalaben. In his statement before the police it was maintained by the petitioner that he was married and had two children, but Ms.Haribalalben Gohil was residing with him and had a child through him and that he was maintaining relations with her as husband and wife with the consent of his previous wife Manjulaben. Ms.Haribalaben had also stated in her statement before the police officer that she had contracted love marriage with the petitioner and that she was staying with the petitioner as his wife.

3. On June 27, 1986, the statements recorded by the Police Sub Inspector were forwarded by the District Superintendent of Police, Godhra to the District Development Officer, Panchmahals, for necessary action. On perusal of the papers, the District Development Officer, Panchmahals, was satisfied that the petitioner, who was a panchayat servant, had committed breach of Rule 21 of the Gujarat Panchayat Service (Conduct) Rules, 1964 by contracting another marriage with Ms.Haribalalben, and that this was a fit case for initiating a departmental inquiry against him. Accordingly, a charge dated August 4, 1986 was framed against the petitioner mentioning that by contracting second marriage with Ms.Haribalaben, the petitioner had committed breach of Rule 21 of the Gujarat Panchayat Service (Conduct) Rules, 1964, for which the petitioner was liable to be visited with penalty. The statement of imputation and other relevant materials were supplied to the petitioner. By an order dated October 6, 1986, the Deputy District Development Officer, who is the disciplinary authority, had appointed Chitnis, Jilla Panchayat as inquiry officer. The inquiry officer had recorded statements of (i) the petitioner, (ii) Manjulaben etc. In his statement before the inquiry officer, the petitioner had stated that he was living with Ms. Haribalaben as a friend and that he had not contracted any marriage with her. On appreciation of evidence adduced before him, the inquiry officer concluded that the second marriage of the petitioner with Ms. Haribalaben was not proved, but moral turpitude and licentious behaviour on the part of the petitioner were proved. The inquiry officer submitted his report dated May 14/27, 1987 to the disciplinary authority. On perusal of the papers, the disciplinary authority was of the view that the misconduct on the part of the petitioner in having extra-marital relations with another woman was serious one and, therefore, a notice dated June 11, 1987 was issued to the petitioner calling upon him to show cause as to why he should not be removed from service. On receipt of notice, the petitioner had submitted his reply dated September 3, 1987. As the reply of the petitioner was not found to be satisfactory, the disciplinary authority had forwarded all the relavant papers to the Selection Committee for consultation as required by Rule 7(2) of the Gujarat Panchayat Service (Discipline and Appeal) Rules along with forwarding letter dated September 30, 1987. The Selection Committee had, after perusal of papers, advised the disciplinary authority vide letter dated November 11, 1987 to remove the petitioner from service. After reviewing the matter, the disciplinary authority was of the confirmed opinion

that moral turpitude and wantonness proved on the part of the petitioner were serious and his conduct was unbecoming of a panchayat servant. The disciplinary authority, therefore, by an order dated November/December 1, 1987 removed the petitioner from service. The said order is produced by the petitioner at Annexure-B to the petition.

4. Feeling aggrieved by the said order, the petitioner preferred Appeal No. 5/87 before the District Development Officer, Panchmahals at Godhra under Rule 13 of the Gujarat Panchayat Service (Discipline and Appeal) Rules, 1964. The appellate authority agreed with the view taken by the disciplinary authority and dismissed the appeal by an order dated March 15, 1988, which is produced at Annexure-C to the petition. The matter was thereafter carried by the petitioner before the Gujarat Civil Services Tribunal, Gandhinagar by way of Appeal No. 138 of 1988. The Tribunal by its well-reasoned judgment dated June 10, 1988, running into 25 pages, has rejected the appeal, giving rise to instant petition.

5. Mr.D.K.Mehta, learned counsel appearing for Mr.P.V.Hathi, learned advocate of the petitioner, contended that the charge against the petitioner was that the petitioner, who has a wife living, had contracted another marriage without first obtaining the permission of the District Panchayat or the authority empowered by it in this behalf, and the marriage having not been proved, the petition should be accepted.

6. Mr. M.R.Shah, learned counsel of the respondent No.1, has vehemently argued that the factum of second marriage of the petitioner with Ms.Haribalaben stands proved by the further affidavit filed by the petitioner himself in instant petition and, therefore, no relief should be granted to the petitioner on the basis that the charge levelled against the petitioner was not proved. Ms. Haribalaben Gohil, who was impleaded as respondent No.4, has maintained before the Court that the petitioner had contracted marriage with her and that it is not correct to contend that the charge framed against the petitioner is not proved.

7. As is evident from the narration of facts, the petitioner has changed his version from time to time before different authorities. Firstly, he had stated before the police officer that he had contracted marriage with Ms.Haribalaben. However, before the inquiry officer it was asserted by the petitioner that he had not contracted any marriage with Ms.Haribalaben, but she was

staying with him as his friend. During the pendency of appeal before the District Development Officer which was filed against the order of removal from service passed by the disciplinary authority, the petitioner had submitted a typed statement dated February 29, 1988 claiming that he had divorced his first wife and that Ms.Haribalaben was his second wife. The reference to typed statement dated February 29, 1988 is to be found on internal page 14, para-4, of the judgment rendered by the Gujarat Civil Services Tribunal, Gandhinagar. In instant petition, the petitioner has filed further affidavit on July 2, 2002, wherein he has claimed that he had remarried with Ms.Haribala Gohil in the year 1984 after obtaining customary divorce. Along with his further affidavit, the petitioner has produced a copy of order and judgment dated April 15, 1999, passed by the learned Civil Judge (S.D.), Godhra, in Hindu Marriage Petition No.2 of 1999. The order of the Court indicates that the petitioner and his first wife Manjulaben Fatesinh Gadhvi had filed Hindu Marriage Petition No.2 of 1999 under Section 13-B of the Hindu Marriage Act, 1955, for obtaining divorce by consent, wherein it was averred that customary divorce between the petitioner and his first wife Manjulaben had taken place in the year 1982. As is evident from the order of the Court, the learned Judge has not accepted this claim of the petitioner and dissolved the marriage of the petitioner with his first wife Manjulaben by order dated April 15, 1999. It may be stated that except making a bald assertion that customary divorce had taken place between him and his wife, the petitioner did not and could not produce any evidence to substantiate the same. At this stage, it would be relevant to notice the principle of law laid down by the Supreme Court in Yamanaji H.Jadhav v. Nirmala, AIR 2002 SC 971. The Supreme Court in the said decision has ruled that customary divorce being an exception to general law of divorce, must be pleaded and established by party propounding such custom. The petitioner did not adduce any evidence before the learned Civil Judge (S.D.), Godhra, who was deciding the Hindu Marriage Petition filed by him along with his wife Manjulaben under Section 13-B of the Hindu Marriage Act, that customary divorce had taken place. Under the circumstances, the claim advanced by the petitioner that he had obtained customary divorce with his previous wife in the year 1982, cannot be accepted and will have to be rejected. Further, if customary divorce had taken place, it was not necessary for him to approach the Court under Section 13-B of the Hindu Marriage Act, 1955. Moreover, the Court would not have dissolved a marriage, which according to the petitioner, was already dissolved in the year 1982 by the

acts of the parties. Thus, there is no manner of doubt that on the showing of the petitioner himself, the marriage between him and his first wife was dissolved when the learned Civil Judge (S.D.), Godhra passed order on April 15, 1999, in Hindu Marriage Petition No.2 of 1999. As noticed earlier, the petitioner in his further affidavit dated July 2, 2002 filed in instant petition, has in clear and unequivocal terms admitted that he had remarried with Ms.Haribalaben Gohil in the year 1984. The affidavit filed by the petitioner before the High Court on oath in this very petition has sanctity and, therefore, while deciding the question whether the charge, namely, that during subsistence of his first marriage, the petitioner had contracted second marriage, is proved or not, the affidavit filed by the petitioner cannot be ignored. In view of what is admitted by the petitioner himself in his typed statement dated February 19, 1988, which was produced before the District Development Officer during the pendency of the appeal and further affidavit filed by the petitioner on July 2, 2002, there is no manner of doubt that the charge that the petitioner had contracted second marriage during the subsistence of his first marriage without obtaining permission of the competent authority, stands proved. Therefore, it is not correct to contend that the charge as framed is not proved and that the petitioner is entitled to the reliefs claimed in the petition.

8. Even if it is assumed for the sake of argument that the charge that the petitioner had contracted second marriage with Ms.Haribalaben during the subsistence of first marriage without obtaining previous permission of the competent authority, is not proved, there is no manner of doubt that it is proved by cogent evidence that he was staying with Ms.Haribalaben and had begotten a child through her. This would show that the petitioner, who was a married man, had extra-marital relations with another lady and his such conduct was moral turpitude and exhibited his wantonness. This would in turn establish that the conduct of the petitioner was unbecoming of a panchayat servant. The finding of the inquiry officer, which is upheld by the disciplinary authority and District Development Officer in appeal as well as the Gujarat Civil Service Tribunal that the conduct of the petitioner is unbecoming of a panchayat servant,is eminently just and is virtually not challenged before this Court. The said finding is based on the evidence adduced before the inquiry officer during the course of inquiry. The said finding being a pure finding of fact is not liable to be interfered with in a petition which is essentially filed under Article 227 of the

Constitution. In Ministry of Finance and another v. S.B.Ramesh, AIR 1998 SC 853, the Government servant was charged that he, by living with another woman and having children by her, had exhibited a conduct unbecoming of a Government servant. The Central Administrative Tribunal had taken a view that there is no law in our Country which makes sexual relationship confined to legal wedlock, nor there is law in our Country which makes sexual relationship of two adult individuals of different sex, unlawful unless the relationship is adulterous or promiscuous and, therefore, the Government servant had not exhibited a conduct unbecoming of a Government servant. The Supreme Court has disapproved this approach, which means that having a mistress by a Government servant is a conduct unbecoming of him and such officer is liable to be departmentally dealt with. In a case where the panchayat servant is found keeping a mistress or a concubine, it cannot be viewed lightly and on proof thereof, it will have to be held that the conduct of the servant would be such as unbecoming of a panchayat servant. Therefore, the disciplinary authority was justified in issuing notice to the petitioner calling upon him to show cause as to why he should not be removed from service and removing him from service after obtaining his explanation. At this stage, it would be relevant to mention that Rule 3 of the Gujarat Panchayat Services (Conduct) Rules, 1964, before its amendment, was as under :-

"Every panchayat servant shall, at all times, maintain absolute integrity and devotion to duty"

This Rule was subsequently amended vide Notification dated April 23, 1987 and the amended Rule 3 reads as under :-

"Rule-3 : General : Every Panchayat Servant shall at all times, -

(i) maintain absolute integrity;

(ii) maintain devotion to duty; and

(iii) do nothing which is unbecoming of a Panchayat Servant."

Thus, before submission of inquiry report dated May 14/27, 1987, Rule 3 was already amended and, therefore, disciplinary authority had issued notice dated June 11, 1987 calling upon the petitioner to show cause as to why he should not be removed from service because his conduct of having extra-marital relations with another woman was unbecoming of him as a panchayat servant.

9. It is true that initially the charge levelled against the petitioner was that he had contracted second marriage without permission of the competent authority and that he has been removed from service on the ground that his conduct is unbecoming of a panchayat servant. However, Rule 7(9) of the Gujarat Panchayats Service (Discipline and Appeal) Rules, 1964 mentions that at the conclusion of the inquiry, the inquiry officer shall prepare a report of the inquiry, recording his findings on each of the charges together with reasons therefor. It further provides that if in the opinion of the inquiry officer, the proceedings of the inquiry establish charges different from those originally framed, he may record findings on such charges. The proviso appended to sub-rule 9 of Rule 7 stipulates that findings on such charges shall not be recorded unless the panchayat servant has admitted the fact constituting such charges or has had an opportunity of defending himself against such charges. The record would indicate that the petitioner has admitted that he was living with Ms. Haribalaben, though his first marriage was subsisting and that she had given birth to his child. Though the inquiry established charge different from one originally framed, the petitioner having admitted the fact constituting such charge, the enquiry officer was justified in recording said finding on the basis of which the disciplinary authority has taken the action. Further, the petitioner was given an opportunity of defending himself against the charge which was different from the one originally framed and which stands established. The petitioner has not pleaded nor shown that any prejudice was caused to him by the finding recorded by the enquiry officer to the effect that his conduct was unbecoming of a panchayat servant. This aspect has been dealt with in detail by the Gujarat Civil Services Tribunal, Gandhinagar in its judgment on internal pages 17 & 18, with which this Court fully agrees. In view of what is observed hereinabove, the Court is of the opinion that the finding recorded by the disciplinary authority to the effect that the conduct of the petitioner was unbecoming of a panchayat servant, which is affirmed by the appellate authority i.e. the District Development Officer and the Gujarat Civil Services Tribunal, Gandhinagar, is eminently just and hereby upheld.

10. The contention that the Circular dated November 25, 1987 of the Panchayat and Rural Housing Department, which is based on the Circular dated October 16, 1986 issued by the General Administration Department of the State Government, could not have been made applicable to

the facts of the case, is devoid of merits. The order removing the petitioner from service passed by the disciplinary authority i.e. the Deputy District Development Officer (Revenue), Panchmahals at Godhra, is produced at Annexure-B to the petition. It indicates that nine documents enumerated in preamble were taken into consideration by the disciplinary authority before passing the said order. It does not indicate that the Circular dated November 25, 1987 of the Panchayat and Rural Housing Department was taken into consideration. Thus, the petitioner has failed to lay the factual basis for establishing that Circular dated November 25, 1987 of the Panchayat and Rural Housing Department was taken into consideration by the disciplinary authority before passing the order removing him from service.

11. The last contention that the punishment imposed on the petitioner is harsh and, therefore, the Court should interfere with the same by substituting any lesser punishment stipulated in Rule 5 of the Gujarat Panchyat Service (Discipline and Appeal) Rules, 1964, cannot be accepted. Rule 5 of the above referred to Rules, inter-alia, provides that for good and sufficient reasons, any of the following penalties may be imposed on a member of the Panchayat Service, namely : (1) censure, (4) withholding of increments or promotions, (5) recovery from pay of the whole or part of any pecuniary loss caused to the Panchayat by negligence or breach of orders, (6) reduction in rank including reduction to a lower post or time-scale or to a lower stage in a time-scale, (7) compulsory retirement, (8) removal from service not disqualifying for future employment, (9) dismissal from service which shall ordinarily be a disqualification for future employment. The order dated November/December 1, 1987 passed by the disciplinary authority removing the petitioner from service, would indicate that before passing the said order, the disciplinary authority had taken into consideration the advice tendered by the Panchayat Service Selection Committee. It was also noticed by the disciplinary authority that the conduct of the petitioner was moral turpitude and exhibited wantonness on his part. Continuing such a person in service would not have enhanced the image of service, and would have sent wrong signal to other employees. Under the circumstances, it is difficult to come to the conclusion that removal of the petitioner from service not disqualifying for future employment is a harsh punishment, which is imposed by the disciplinary authority. This aspect is also considered by the appellate authority i.e. the District Development Officer, Panchmahals at Godhra. While disposing of the

appeal filed by the petitioner it has been concluded by the appellate authority that the punishment imposed on the petitioner is commensurate with his misconduct. Further, the plea that the punishment imposed on him is harsh, was also agitated by the petitioner before the Gujarat Civil Services Tribunal, Gandhinagar, and the same has been rejected by the Tribunal by assigning cogent and convincing reasons which are to be found in para-8 of the judgment of the Tribunal. Thus, the disciplinary authority as well as the appellate authority and the Tribunal have found that the punishment of removal of the petitioner from service is not a harsh one and does not call for any interference. This Court while hearing the present petition, which is essentially filed under Article 227 of the Constitution, would not be justified in interfering with the punishment imposed by the disciplinary authority, more particularly when the petitioner has failed to demonstrate that the discretion of imposing punishment has been exercised by the authorities either arbitrarily or capriciously. The authorities have considered all the relevant facts before imposing punishment of removal from service. Therefore, the plea that punishment is harsh and should be substituted by the Court in the present petition cannot be entertained and is hereby rejected.

12. The above referred to points are the only points which have been urged at the Bar in support of the petition. As the Court does not find any substance in any of the contentions raised on behalf of the petitioner, the petition is liable to be dismissed.

13. For the foregoing reasons, the petition fails and is dismissed. Rule is discharged. There shall be no order as to costs. The interim relief granted by the Court vide order dated June 24, 1988 is hereby vacated.

14. At this stage, the learned counsel for the petitioner prays that the interim relief granted by the Court earlier be continued for sometime to enable the petitioner to approach the higher forum. In view of the discussion made hereinabove, I am of the opinion that continuing interim relief is neither in the interest of justice nor in the interest of Panchayat Service and, therefore, such a prayer cannot be accepted. Therefore, the prayer to continue interim relief for sometime to enable the petitioner to approach the higher forum is hereby rejected.

(J.M.Panchal,J.)

(patel)